

**AN ORDINANCE TO APPROVE THAT CERTAIN SECOND AMENDMENT
TO DEVELOPMENT AGREEMENT FOR WILMINGTON PUBLIC WORKS
YARD AND ADJACENT PROPERTIES**

#3755

Sponsor:

Council
Member
Shabazz

Co-Sponsor:

Council
Member
M. Brown

WHEREAS, pursuant to Wilm. C. (Charter) § 1-101, the City may acquire, hold, manage, and dispose of property on such terms as it deems proper for any municipal purpose; and

WHEREAS, pursuant to Substitute No. 1 to Ordinance No. 06-005, the City Council approved that certain Development Agreement for Wilmington Public Works Yard and Adjacent Properties dated January 28, 2006 (the "Development Agreement"); and

WHEREAS, under the terms of the Development Agreement, Justison Landing LLC and The Buccini/Pollin Group, Inc. have paid the entire \$15,250,000 base purchase price for the land to be developed pursuant thereto, of which \$9,594,000 was paid to the City for the land that it owned; and

WHEREAS, Section 3.B.a. of the Development Agreement requires Justison Landing LLC and The Buccini/Pollin Group, Inc. to make certain "Residential Bonus Density Payments" to the City based upon the number of residential units within the Justison Landing project once The Buccini/Pollin Group, Inc. and Justison Landing LLC have caused at least 354 residential units to be constructed; and

WHEREAS, as of the date of this ordinance, The Buccini/Pollin Group, Inc. and Justison Landing LLC have caused 341 residential units to be constructed within the Justison Landing project; and

WHEREAS, The Buccini/Pollin Group, Inc. intends to subdivide Tax Parcel No. 26-042.00-023, having an address of 400 S. Madison Street, so that it may be developed as a two-phase, apartment building project (the "Apartment Project") containing 116 apartment

units in phase one and 80 apartment units in phase two; and

WHEREAS, due to changing economic conditions since the execution of the Development Agreement, The Buccini/Pollin Group, Inc. requests that the Development Agreement be amended to defer the required payment of the \$600,000 "Residential Bonus Density Payment" resulting from phase one of the Apartment Project until construction begins on phase two of the Apartment Project.

THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Second Amendment to Development Agreement for Wilmington Public Works Yard and Adjacent Properties among the Delaware Department of Transportation, City of Wilmington, Riverfront Development Corporation of Delaware, Justison Landing LLC and The Buccini/Pollin Group, Inc., a copy of which is attached hereto as Exhibit "A", is hereby approved, and the Mayor and the City Clerk are hereby authorized and directed to execute as many copies of said amendment, as well as all additional undertakings related thereto, as may be necessary.

SECTION 2. The appropriate officers of the City are hereby authorized and directed to take all such action, execute, deliver, file and record all such documents, publish all notices and otherwise carry out the intent of this Ordinance in the name of and on behalf of the City.

SECTION 3. This ordinance shall be deemed effective upon its date of passage by City Council and approval of the Mayor.

First Reading.November 15, 2012
Second Reading. . . November 15, 2012
Third Reading. . . .Dec. 6, 2012

Passed by City Council,
December 6, 2012

Norman D. Huff
President of City Council
12/6/12

ATTEST: Maribel Seijo
City Clerk

Approved as to form this
15 day of November, 2012

[Signature]
Senior Assistant City Solicitor

Approved this 10th day of Dec, 2012

[Signature]
Mayor

SYNOPSIS: This Ordinance approves an amendment to the Development Agreement for Wilmington Public Works Yard and Adjacent Properties, which is commonly known as the Justison Landing Development Agreement. The amendment provides for the deferral of a \$600,000 "residential bonus density payment" due from The Buccini/Pollin Group, Inc. to the City of Wilmington until the earlier to occur of: (1) the sixth anniversary of the completion of the 457th residential unit in the Justison Landing project or (2) the commencement of construction on the 458th residential unit in the Justison Landing project.

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT

FOR WILMINGTON PUBLIC WORKS YARD AND ADJACENT PROPERTIES

THIS SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR WILMINGTON PUBLIC WORKS YARD AND ADJACENT PROPERTIES (this "Second Amendment") is made as of the ____ day of _____, 2012 by and among the DELAWARE DEPARTMENT OF TRANSPORTATION, a public agency of the State of Delaware ("DelDOT"), the CITY OF WILMINGTON, a municipal corporation of the State of Delaware ("City"), the RIVERFRONT DEVELOPMENT CORPORATION OF DELAWARE ("RDC") and JUSTISON LANDING LLC ("Justison Landing") as designee of The Buccini/Pollin Group, Inc. ("BPG") (collectively the "Parties").

WITNESSETH:

WHEREAS, the Parties have entered into a certain Development Agreement for the Wilmington Public Works Yard and Adjacent Properties dated January 28, 2006 (the "Original Development Agreement"); and

WHEREAS, the Original Development Agreement was amended pursuant to that First Amendment to Development Agreement for Wilmington Public Works Yard and Adjacent Properties dated August 2, 2006 (the "First Amendment"; the Original Development Agreement as modified by the First Amendment is hereinafter referred to as the "Development Agreement"); and

WHEREAS, the Parties desire to amend the Development Agreement pursuant to the terms and conditions set forth below in order to redefine and defer some of the Residential Bonus Density Payments required by the Development Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements contained herein, the Parties, intending to be legally bound hereby, do covenant and agree with each other as follows:

1. Definitions. Capitalized terms that are used but not defined in this Second Amendment shall have the respective meanings ascribed to them in the Development Agreement.

2. Acknowledgement of Receipt of Purchase Price. The Seller Parties acknowledge the payment in full by BPG and Justison Landing of the \$15,250,000 base purchase price for the Development Property as set forth in Paragraph 3.A. of the Development Agreement.

3. Residential Bonus Density Payment. Paragraph 3.B.a. of the Development Agreement is deleted in its entirety and replaced with the following:

"a. Residential: For purposes of this Paragraph 3.B.a., "**Housing Unit**" shall mean any residential house, townhouse, apartment, or condominium and any other dwelling unit that may be used for short or long-term usage, including but not limited to, hotel rooms, corporate suites and short-term apartments. BPG and Justison Landing shall pay to the City residential bonus density payments as follows (each a "**Residential Bonus Density Payment**"):

- (i) BPG and Justison Landing shall pay \$600,000 to the City upon the earlier to occur of: (1) the issuance of a building permit for any project that will include the construction of the four hundred fifty-eighth (458th) Housing Unit on the Development Property or (2) the sixth (6th) anniversary of the completion of the four hundred fifty-seventh (457th) Housing Unit on the Development Property.
- (ii) BPG and Justison Landing shall pay \$300,000 to the City upon the completion of the five hundred fifty-fourth (554th) Housing Unit on the Development Property.
- (iii) BPG and Justison Landing shall pay \$100,000 to the City upon the completion of the six hundred fifty-fourth (654th) Housing Unit on the Development Property.
- (iv) To the extent that the Development Property contains more than 700 Housing Units, BPG and Justison Landing shall pay \$3,000 to the City for each completed Housing Unit above 700.

A Housing Unit shall be deemed to be completed once the City of Wilmington has issued a certificate of occupancy that allows for the lawful occupation of such Housing Unit. By way of example, if BPG and Justison Landing construct 738 Housing Units on the Development Property, then the City would receive an aggregate Residential Bonus Density Payment of \$1,114,000 [= \$600,000 + \$300,000 + \$100,000 + (\$3,000 x 38 units)]. If any Residential Bonus Density Payment described within this Paragraph 3.B.a. is not paid within thirty (30) days following the event that triggered the applicable Residential Bonus Density Payment, then such Residential Bonus Density Payment shall accrue interest at a rate of one and one-half percent (1.5%) per month."

4. Development Agreement Remains In Full Force and Effect. Except as specifically modified herein, the Development Agreement shall remain in full force and effect.

5. Captions. The captions preceding the various paragraphs of this Second Amendment have been inserted solely for the convenience of reference and shall not be used in construing this Second Amendment.

6. Counterparts. This Second Amendment may be executed in several counterparts, all of which, when taken together shall constitute one and the same agreement. An executed copy of this Second Amendment transmitted via telecopier shall be sufficient as an original for all purposes.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed the day and year first written above.

Approved as to form this 15th day of
November, 2012.

Richard L. Enge by JLD
Senior Assistant City Solicitor

CITY OF WILMINGTON:

BY: _____ (SEAL)
Name: _____
Its: _____

**DELAWARE DEPARTMENT OF
TRANSPORTATION:**

BY: _____ (SEAL)
Name: _____
Its: _____

**RIVERFRONT DEVELOPMENT
CORPORATION OF DELAWARE:**

BY: _____ (SEAL)
Name: _____
Its: _____

THE BUCCINI/POLLIN GROUP, INC.:

BY: _____ (SEAL)
Robert E. Buccini
President

JUSTISON LANDING LLC:

BY: _____ (SEAL)
Robert E. Buccini
Authorized Member